



CONSTITUENT ASSEMBLY OF PAKISTAN DEBATES

Wednesday, the 21st November, 1951

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF PAKISTAN

Wednesday, 21st November, 1951

The Constituent Assembly of Pakistan met in the Assembly Chamber, Karachi, at Three of the Clock, Mr. President (The Honourable Mr. Tamizuddin Khan) in the Chair.

ADDITION OF NEW RULE 6B TO C. A. P. RULES OF PROCEDURE

The Honourable Pirzada Abdus Sattar Abdur Rahman (Sind : Muslim) : Sir, I beg to move :

"That after Rule 6A of the Constituent Assembly Rules, the following new Rule be inserted :—

6B. *Disqualification for membership.*

- (1) (a) No person shall be eligible for election to the Constituent Assembly of Pakistan unless he has been or has become a permanent resident of Pakistan and owes allegiance to Pakistan and to no other State. In case of dispute with regard to the question of eligibility the decision of the President shall be final.
(b) Any member of the Constituent Assembly in respect of whom the President has reason to believe that he has neither been nor become a permanent resident of Pakistan or that he does not owe allegiance to Pakistan exclusively as provided in clause (a) of this sub-rule, may be called upon by the President to show cause, within a period specified by the President, as to why his seat should not be declared vacant.
(c) If such a member fails to satisfy the President within the specified period, that he has not incurred any of the disqualifications mentioned in clause (b) of this sub-rule, the President shall order that he ceases to be a member of the Constituent Assembly and declare his seat vacant.
(d) The decision of the President under this sub-rule shall be final and shall not be questioned in any Court of law or before any other authority.
- (2) (a) A person shall be disqualified for being chosen as, and for being, a member of the Constituent Assembly :—
 - (i) if he is of unsound mind and stands so declared by a competent court ;
 - (ii) if he is an undischarged insolvent ;
 - (iii) if he has been convicted, or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been declared by Order in Council or by a law of any legislative authority in Pakistan which that authority was competent to make to be an offence or practice entailing disqualification for membership of the Constituent Assembly or the Central Legislature, unless such period has elapsed as may be specified in that behalf by the provisions of that Order or law ;
 - (iv) if he has been dismissed for misconduct from a service of or from a post in connection with the affairs of the Federation or a province, unless a period of five years or such less period as the President may allow in any particular case, has elapsed since his dismissal ;
 - (v) if he has been convicted of any other offence by a court in Pakistan and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the President may allow in any particular case, has elapsed since his release ;
 - (vi) if, having been nominated as a candidate for the Central or any Provincial Legislature or having acted as an election agent of

[The Honourable Pirzada Abdus Sattar Abdur Rahman.]

any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any Order in Council made under the Government of India Act, 1935, or by a law of any legislative authority in Pakistan which that authority was competent to make, unless five years have elapsed from the date by which the return ought to have been lodged or the President has removed the qualification :

Provided that a disqualification under sub-clause (vi) of this clause shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the President may in any particular case allow.

- (b) A person shall not be capable of being chosen a member of the Constituent Assembly while he is serving a sentence of transportation or of imprisonment for a criminal offence.
- (c) Where a person who by virtue of a conviction, or an order of dismissal or a conviction and a sentence, becomes disqualified by virtue of sub-clause (iii), (iv) or (v) of clause (a) of this sub-rule is at the date of the disqualification a member of the Constituent Assembly, his seat shall, notwithstanding anything in this sub-rule not become vacant by reason of the disqualification until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is brought in respect of the conviction, order or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this sub-rule he shall not sit or vote.
- (d) If a person sits or votes as a member of the Constituent Assembly when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of clause (c) of this sub-rule, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Federation.

In this rule—

“Central Legislature” means the Central Legislature established under the Government of India Act, 1919; and references to Pakistan shall be construed as regards any period before the 15th day of August, 1947, as references to British India as defined in sub-section (1) of Section 311 of the Government of India Act, 1935, as originally enacted.”.

Mr. President : Motion moved :

“That after Rule 6A of the Constituent Assembly Rules, the following new Rule be inserted :—

6B. Disqualification for membership.

- (1) (a) No person shall be eligible for election to the Constituent Assembly of Pakistan unless he has been or has become a permanent resident of Pakistan and owes allegiance to Pakistan and to no other State. In case of dispute with regard to the question of eligibility the decision of the President shall be final.
- (b) Any member of the Constituent Assembly in respect of whom the President has reason to believe that he has neither been nor become a permanent resident of Pakistan or that he does not owe allegiance to Pakistan exclusively as provided in clause (a) of this sub-rule, may be called upon by the President to show cause, within a period specified by the President, as to why his seat should not be declared vacant.
- (c) If such a member fails to satisfy the President within the specified period, that he has not incurred any of the disqualifications mentioned in clause (b) of this sub-rule, the President shall order that he ceases to be a member of the Constituent Assembly and declare his seat vacant.
- (d) The decision of the President under this sub-rule shall be final and shall not be questioned in any Court of law or before any other authority.

(2) (a) A person shall be disqualified for being chosen as, and for being, a member of the Constituent Assembly :—

- (i) if he is of unsound mind and stands so declared by a competent court ;
- (ii) if he is an undischarged insolvent ;
- (iii) if he has been convicted, or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been declared by Order in Council or by a law of any legislative authority in Pakistan which that authority was competent to make to be an offence or practice entailing disqualification for membership of the Constituent Assembly or the Central Legislature, unless such period has elapsed as may be specified in that behalf by the provisions of that Order or law ;
- (iv) if he has been dismissed for misconduct from a service of or from a post in connection with the affairs of the Federation or a province, unless a period of five years or such less period as the President may allow in any particular case, has elapsed since his dismissal ;
- (v) if he has been convicted of any other offence by a court in Pakistan and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the President may allow in any particular case, has elapsed since his release ;
- (vi) if, having been nominated as a candidate for the Central or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any Order in Council made under the Government of India Act, 1935, or by a law of any legislative authority in Pakistan which that authority was competent to make, unless five years have elapsed from the date by which the return ought to have been lodged or the President has removed the disqualification :

Provided that a disqualification under sub-clause (vi) of this clause shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the President may in any particular case allow.

(b) A person shall not be capable of being chosen a member of the Constituent Assembly while he is serving a sentence of transportation or of imprisonment for a criminal offence.

(c) Where a person who by virtue of a conviction, or an order of dismissal or a conviction and a sentence, becomes disqualified by virtue of sub-clause (iii), (iv) or (v) of clause (a) of this sub-rule is at the date of the disqualification a member of the Constituent Assembly, his seat shall, notwithstanding anything in this sub-rule not become vacant by reason of the disqualification until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is brought in respect of the conviction, order or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this sub-rule he shall not sit or vote.

(d) If a person sits or votes as a member of the Constituent Assembly when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of clause (c) of this sub-rule, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Federation.

In this rule—

“Central Legislature” means the Central Legislature established under the Government of India Act, 1919 ; and references to Pakistan shall be construed as regards any period before the 15th day of August, 1947, as references to British India as defined in sub-section (1) of Section 311 of the Government of India Act, 1935, as originally enacted.”

The Honourable Pirzada Abdus Sattar Abdur Rahman : Sir, I want to add this that if this amendment of mine is accepted it would necessitate the deletion of sub-rule (5) of Rule 6 that is already there in the Act because that has been incorporated in the new amendment and that amendment has been moved by Dr. Mahmud Husain. So it is not necessary for me to do that. Although it is a consequential amendment that will take place only after my proposal has been accepted by the Assembly.

Shri Dharendra Nath Dutta (East Bengal : General) : Sir, I move :

"That to clause (b) of sub-rule (2) of the proposed Rule 6B, the words 'for two years or more' be added at the end."

*Mr. President, Sir, if you look to sub-Section 2(a)(v) of the motion you will see that it is provided that a person shall be disqualified for being chosen as, and for being a member of the Constituent Assembly if he has been convicted of any other offence by a court in Pakistan and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the President may allow in any particular case, has elapsed since his release. Now clause (b) of this sub-rule says that a person shall not be capable of being chosen a member of the Constituent Assembly while he is serving a sentence of transportation or of imprisonment for a criminal offence.

Suppose, for instance, a man has been convicted under Section 447 for criminal trespass on account of some minor dispute and he was in jail for 15 days during this period of election, it means that he will not be entitled to stand as a candidate for being a member of the Constituent Assembly. He may be otherwise a very desirable person. There is no evidence involving moral turpitude and he may be convicted for a technical offence, such as, criminal trespass or something of that kind. He may be convicted under section 323 for voluntarily causing simple hurt and may be sentenced for 15 days. In such cases he is entitled to become a member of the Constituent Assembly. If there is a provision like this in the Rules, a highly desirable person may be excluded from being a member of the Constituent Assembly. Therefore, I suggest that he shall be incapable of being chosen a member of the Constituent Assembly while he is serving a sentence of transportation or is undergoing a sentence of two years or more for having committed some criminal offence. I think this is a very desirable amendment and I hope the House will accept it. With these few words I move my amendment.

Mr. President : Amendment moved :

"That to clause (b) of sub-rule (2) of the proposed Rule 6B, the words 'for two years or more' be added at the end."

The Honourable Pirzada Abdus Sattar Abdur Rahman : Sir, I am afraid I will have to oppose this amendment because the idea underlying the rule was that when a person is actually undergoing a sentence and he is in jail it will not be desirable that he should be allowed to contest for the Constituent Assembly. It is because of this that I have put it like that. If the amendment of the Honourable Member is accepted, the anomaly will be there. The man has been convicted and sentenced for a criminal offence and he is in jail and while in jail he can be elected. That is why a distinction has been made between the first case and the other. In the first case he was not at the time contesting, but if he is

sentenced to two years or more, he is disqualified from becoming a member. Actually, when he is undergoing a sentence for a criminal offence, he should not be allowed. Therefore, I oppose it.

Mr. President : The question is :

"That to clause (b) of sub-rule (2) of the proposed Rule 6B, the words 'for two years or more' be added at the end."

The motion was negatived.

The Honourable Dr. Mahmud Husain (East Bengal : Muslim) : Sir, I wish to move first amendments Nos. 2 to 6.

The Honourable Pirzada Abdus Sattar Abdur Rahman : Amendment No. 1 will be a consequential proposal for which I have taken your permission. After the rule has been passed, then amendment No. 1 will be necessary. What has happened is that I have taken out sub-rule (5) from rule 6 and have incorporated it under the heading of 'disqualification'. Once the Assembly passed the new rule 6B, sub-rule (5) in rule 6 will not be necessary. So, there will be a separate motion for amendment No. 1.

The Honourable Dr. Mahmud Husain : Sir, I move :

"That in the proposed rule 6B, in clause (a) of sub-rule (1), for the words 'has been or has become' the word 'is' be substituted."

Mr. President : Amendment moved :

"That in the proposed rule 6B, in clause (a) of sub-rule (1), for the words 'has been or has become' the word 'is' be substituted."

The Honourable Pirzada Abdus Sattar Abdur Rahman : I accept this amendment because it is necessary. The word 'is' is more appropriate and the use of so many words is not necessary.

Mr. President : The question is :

"That in the proposed rule 6B, in clause (a) of sub-rule (1), for the words 'has been or has become' the word 'is' be substituted."

The motion was adopted.

The Honourable Dr. Mahmud Husain : Sir, I move :

"That in the proposed rule 6B, in clause (b) of sub-rule (1), for the words 'has neither been nor become' the words 'is not' be substituted."

Mr. President : Amendment moved :

"That in the proposed rule 6B, in clause (b) of sub-rule (1), for the words 'has neither been nor become' the words 'is not' be substituted."

The Honourable Pirzada Abdus Sattar Abdur Rahman : I accept the amendment.

Mr. President : The question is :

"That in the proposed rule 6B, in clause (b) of sub-rule (1), for the words 'has neither been nor become' the words 'is not' be substituted."

The motion was adopted.

The Honourable Dr. Mahmud Husain : I move :

"That in the proposed rule 6B, in clause (b) of sub-rule (1), the words 'as to' in the last but one line be omitted."

Mr. President : Amendment moved :

"That in the proposed rule 6B, in clause (b) of sub-rule (1), the words 'as to' in the last but one line be omitted."

The Honourable Pirzada Abdus Sattar Abdur Rahman : I accept the amendment.

Mr. President : The question is :

"That in the proposed rule 6B, in clause (b) of sub-rule (1), the words 'as to' in the last but one line be omitted."

The motion was adopted.

The Honourable Dr. Mahmud Husain : Sir, I move :

"That in the proposed rule 6B, in clause (c) of sub-rule (1), in the last line but one for the word 'ceases' the word 'cease' be substituted."

Mr. President : Amendment moved :

"That in the proposed rule 6B, in clause (c) of sub-rule (1), in the last line but one for the word 'ceases' the word 'cease' be substituted."

The Honourable Pirzada Abdus Sattar Abdur Rahman : I accept the amendment.

Mr. President : The question is :

"That in the proposed rule 6B, in clause (c) of sub-rule (1), in the last line but one for the word 'ceases' the word 'cease' be substituted."

The motion was adopted.

The Honourable Dr. Mahmud Husain : Sir, I move :

"That in the proposed rule 6B, in clause (c) of sub-rule (1), in the last line after the words 'Constituent Assembly and' the word 'shall' be inserted."

Mr. President : Amendment moved :

"That in the proposed rule 6B, in clause (c) of sub-rule (1), in the last line after the words 'Constituent Assembly and' the word 'shall' be inserted."

The Honourable Pirzada Abdus Sattar Abdur Rahman : I accept the amendment.

Mr. President : The question is :

"That in the proposed rule 6B, in clause (c) of sub-rule (1), in the last line after the words 'Constituent Assembly and' the word 'shall' be inserted."

The motion was adopted.

Mr. President : There is no other amendment now except amendment No. 1. The question is :

"That the motion seeking to amend the rules, as amended, be passed."

Mian Muhammad Iftikharuddin (Punjab : Muslim) : Sir, I beg to oppose the motion moved by the Honourable Pirzada on the ground

The Honourable Pirzada Abdus Sattar Abdur Rahman : On a point of order, Sir. The Honourable Member cannot oppose the motion now. This should have been done much earlier. The second reading is now over and we have considered the motion clause by clause.

Mian Muhammad Iftikharuddin : Sir, this is just the right time for me to oppose the motion, as amended. You have only now put the motion before us as amended. There was no occasion for us to oppose it as amended before.

Mr. President : All right, go on.

Mian Muhammad Iftikharuddin : Sir, I oppose this motion for various reasons. The general principle underlying this motion is very undemocratic. It is clear that no President of this House, no matter how able he may be, can determine as to whether a person has proper qualifications for citizenship or membership or not. It is particularly so in a country like Pakistan which came into being only 4½ years ago and many Muslims living beyond its boundaries in India did not know whether they were going to become Pakistanis or not. In fact people directly from their home towns in India were sent abroad as Pakistan Ambassadors. The question of citizenship is a very complicated one.

The Honourable Pirzada Abdus Sattar Abdur Rahman : Sir, I am very sorry to say that the Honourable Member does not seem to have read my motion. I have not mentioned anywhere disqualification on account of citizenship and he seems to be talking of citizenship all the time. There is no mention of citizenship anywhere.

Mian Muhammad Iftikharuddin : Sir, it relates to the question of citizenship as to me every citizen of Pakistan should have the right to stand for any elective office in the State and the membership of the Constituent Assembly of Pakistan should be open to each and every citizen of Pakistan. That being so I beg to submit that a Member according to this motion can be disqualified without any reference to law court, without having the opportunity of putting his case before a judge, without getting legal help and advice through the mediation of a lawyer. This, to me is a very very serious point. What can be more serious than the question of a person's right to remain a citizen of Pakistan or become a Member of this House. This motion is equivalent to depriving him of the right of becoming a citizen of Pakistan. It is a very serious thing indeed. Even for ordinary points of law one court is not considered sufficient and appeal from one court lies to the second and from the second to the third and from the third to the fourth while this important question is being decided in this way. To my mind, it is extremely undemocratic. Sir, particularly you will bear in mind the question of allegiance to Pakistan. There is no way of defending one-self, at least in a proper manner, if the question is raised here and a decision is given against him. Probably my Honourable colleagues in this House have not paid necessary attention to this. I cannot say how any House, without giving proper attention to such a serious thing, let this motion pass. I strongly oppose this motion. It is based on very undemocratic principles.

Now, Sir, I would also like to bring to the notice of the Honourable Mover of this motion that in certain ways it follows the slavish British practice which is un-Islamic. I humbly beg to submit the fact that a person if he is an undischarged insolvent the mere fact that he is unable to pay his debts will disqualify him from sitting in this House. Now, Sir, this is the British practice, no doubt. You would remember that this rule or convention in British Constitution was brought in during the 19th century, the time of hey-day of British capitalism. Sir, this is not fit and proper for a democratic country which claims to have a constitution on the basis of Islam. Sir, to be insolvent in most cases, I would say, not only in some cases but in most cases, is no crime at all. It is just a matter of helplessness. A person with the best of intentions.....

The Honourable Mr. Fazlur Rahman (East Bengal : Muslim) : Improvidence.

Mian Muhammad Iftikharuddin : A man despite the best of intentions may not be able to pay back his debt. But this House considers him to be incompetent to sit in this Assembly. I beg to submit that most of the Members in other respects, morally speaking, are far lower than the person who may have sincerely borrowed money to do business or to attend to his children or save himself or members of his family from dying of hunger, and may not be able to pay back what he has borrowed.

(Interruption by Shri Sris Chandra Chattopadhyaya.)

Mian Muhammad Iftikharuddin : You do not speak clearly. So I was saying that to me a State which claims that its constitution is or is sought to be Islamic should not bring in a motion

[Mian Muhammad Iftikharuddin.]

like that. It is simply shocking. I would ask the people of this country to think over this motion. It is scandalous. In this State there is so much unemployment—we were discussing this morning that we cannot provide work to people and now people who are insolvent are going to be deprived of their citizens' rights. This is what they get, after all the sacrifices, which were not made for the benefit of the capitalist class.

Mr. President : You are going out of the track.

Mian Muhammad Iftikharuddin : I repeat, Sir, that this motion is most undemocratic and I further, with all respect, beg to submit that most of the clauses of this motion are not only undemocratic but also un-Islamic and I would beg the mover of this motion to reconsider it and not to put it before the House and have it passed by the brute majority which anyhow he has behind him.

The Honourable Pirzada Abdus Sattar Abdur Rahman : Sir, the Honourable Member has been very vehement in his expositions of democracy and he says that since the decision will be taken by the President and not by a court of law, it is undemocratic. May I ask him, Sir, whether it is more democratic for the President of the Parliament, the highest legislature of the country, to take a decision or by a mere District Collector or Returning Officer.

Mian Muhammad Iftikharuddin : By the Federal Court.

The Honourable Pirzada Abdus Sattar Abdur Rahman : The person who scrutinizes the nomination papers takes a decision about a disqualification and does not allow anybody to stand ; that is the provision in all the constitutions—democratic constitutions of the world. That there are disqualifications provided in an Act or a law and these disqualifications are judged by the Returning Officer when he is scrutinizing the nomination papers and therefore his contention that this question of disqualification should be decided by a court of law and then only it will be democratic I have never heard of in any constitution of the world. Therefore, Sir, on the contrary I have gone further and provided that the President of the Parliament, the highest legislature in the country, should take a decision about the disqualifications and the objections raised and his power is final. You have not got any court of law determining all these things. Therefore, Sir, I attribute to the excess of exuberance and vehemence for democracy or whatever it is, I am unable to say what it is due to, but all the same I have explained how the things really stand.

Another point to which he has taken objection is about undischarged insolvent. I am again very sorry to say that the Honourable Member does not understand what an undischarged insolvent is. An insolvent is declared only by court of law. When an insolvent person applies he has to go to a court of law and make an application that "I am not able to pay my debts ; please declare me insolvent." Then the court declares him insolvent and then he has got opportunity to pay back his debts or a portion of these and after satisfying and making a compromise with the people concerned he goes to a court of law and makes an application that he should be discharged. Then he becomes an undischarged insolvent. Now where is the injustice and where is the morality of which my friend is talking. The person, having taken money from A, B, C, D, goes to a court of law makes an application declaring him

insolvent so that he would not pay this money of those people. Such a person when he makes the application becomes immoral by making an application of that nature. So it is no use, for the sake of propaganda, bringing in *Shariat* and Islam and all these things.....

Mian Muhammad Iftikharuddin :

Bat sun lijiay zara Governor Sahib ki !

Just listen to what His Excellency the Governor says !

The Honourable Pirzada Abdus Sattar Abdur Rahman : And I am told that if a person dies a debtor his *Namaz* is also not *Jaiz*. That is a *Hadis* of Islam. And you are encouraging a gentleman who having taken a debt, having taken money from other honest people, goes to a court of law and deprives them of that money by having himself declared insolvent and, well, you are in sympathy with him and you call it Islam and fight and become very vehement as a safeguard of Islam. So undischarged insolvent is a person who is undesirable to become a member of the legislature, especially of this august House. This disqualification exists everywhere that undischarged insolvents should not be allowed, for various reasons, to become members of the Parliament. Therefore, I think the contentions of my friend do not hold good and the Honourable House will be pleased to support my motion.

Shri Dharendra Nath Dutta : The Honourable Minister is wrong. For declaring himself insolvent, he must place all his property at the disposal of the Court.

The Honourable Pirzada Abdus Sattar Abdur Rahman : That is quite true, but that property may be very much less than the debt he has incurred. It may be worth Rs. 100, whereas the debt may be one lakh or more, and his people may be deprived of all that money.

Mr. President : The question is :

“That the motion seeking to amend the rules, as amended, be passed.”

The motion was adopted.

The Honourable Dr. Mahmud Husain : Sir, may I put the consequential motion.

Mr. President : Yes.

The Honourable Dr. Mahmud Husain : Sir, I beg to move :

“That sub-rule (5) of rule 6 of the Constituent Assembly Rules be omitted.”

Mr. President : The question is :

“That sub-rule (5) of rule 6 of the Constituent Assembly Rules be omitted.”

The motion was adopted.

Mr. President : The House stands adjourned *sine die*.

The House then adjourned *sine die*.